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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,700	01/07/2005	Ralf Neuhaus	2002P10203WOUS	5200

7590 03/24/2009

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EXAMINER	
KIM, TAE K	
ART UNIT	PAPER NUMBER
2453	
MAIL DATE	DELIVERY MODE
03/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/520,700	NEUHAUS ET AL.	
	Examiner	Art Unit	
	TAE K. KIM	2453	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 December 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12,13,15-19,23-25 and 29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12,13,15-19,23-25 and 29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is in response to the Applicant's response filed on December 4, 2008. Claims 1 – 11, 14, 20 – 22, and 26 – 28 have been previously cancelled by the Applicant. Claims 12, 13, 15 – 19, 23 - 25, and 29, where Claims 12, 18, and 25 are in independent form, are presented for examination.

Response to Arguments

Applicant's arguments filed on December 4, 2008 have been fully considered but they are moot based on the new grounds of rejection as stated below.

Claim Objections

1. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The recited limitation "wherein the update is performed by sending software from a component with a more up-to-date release relative to the release on the other of the components" does not further limit the subject matter of Claim 12, where it recites "software with a more up-to-date release is sent from a third communication component to a component with an earlier release."

2. Claims 18 and 25 are objected to because of the following informalities: typographical error having repeated "wherein" clauses. Appropriate correction is required.

3. Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The recited limitation "wherein the service is provided by the first component" does not further limit the subject matter of Claim 18, where it recites "enabling the identical software-controlled service in a first of the communication components."

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose of "updating software pertaining to…the identical service in a second of the communication components by downloading software…from the first communication component to the second communication component, wherein…software pertaining to the service is send from a third communication component to the second communication component.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "the service is provided by the first component" without describing which service is being provided, such as the identical software-controlled service or another service.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 13, 16 – 19, and 23 – 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,904,457, invented by Brian Gerard Goodman (hereinafter "Goodman").

6. Regarding Claims 12 and 25, Goodman discloses a method for updating services in a communication network containing multiple communication components which use and provide the services in the network [Figs. 1 and 2], comprising:

providing an identical software-controlled service with a plurality of the components [Fig. 2; Col. 1, Line 63 – Col. 2, Line 24; at least two nodes that run the same firmware];

identifying at least some of the components providing the identical software-controlled service in the communication network [Fig. 2; Col. 4, Line 20 – Col. 5, Line

43; a reset node queries other nodes within the network to determine if the firmware level at the queried node is high than the firmware level at the reset node];

initiating a comparison of information by one of the components to compare release information of software controlling the service on each of the identified components when providing the identical software-controlled service [Fig. 2; Col. 4, Line 20 – Col. 5, Line 43; a reset node queries other nodes within the network to determine if the firmware level at the queried node is high than the firmware level at the reset node]; and

initiating a software update for one component when a comparison identifies that the release on said one component is different from the release on another of the components [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node to receive the higher level firmware image from the node identified with the higher level firmware], wherein software with a more up-to-date release is sent from a third communication component to a component with an earlier release [Fig 1 – 3; the higher level firmware can be found on the third node (third component) within the nodal system of Fig. 1 to the reset node].

Goodman further discloses that each node can communicate with each other via peer-to-peer [Col. 2, Line 65 – Col. 3, Line 5]. Goodman also discloses that the nodes within the network can broadcast its code signature to other nodes to initiate the firmware updating process on the nodes that did not initiate the query [Col. 5, Lines 1-7]. Goodman further discloses that each node request and send higher level firmware

to one another if it is determined that a higher level firmware exists within the system [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node to receive the higher level firmware image from the node identified with the higher level firmware]. Therefore, each node is a "servent" since they can act like a client by originating queries to another node and can act as a server by providing file information to requesting nodes.

7. Regarding Claim 13, Goodman discloses all the limitations of Claim 12 above. Goodman further discloses that the update is performed by sending software from a component with a more up-to-date release relative to the release on the other of the components [Fig 1 – 3; the higher level firmware can be found on the third node within the nodal system of Fig. 1 to the reset node].

8. Regarding Claim 16, Goodman discloses all the limitations of Claim 12 above. Goodman further discloses that the network includes a packet-switching network [Col. 2, Line 65 – Col. 3, Line 5; peer-to-peer connection between the nodes].

9. Regarding Claim 17, Goodman discloses all the limitations of Claim 12 above. Goodman further discloses that the identical software-controlled service is selected from the group consisting of gateway functionality, voicemail server service, and address server service [Col. 2, Lines 52-65; the nodal system can be used in a variety of application, such as automobiles, household appliances, consumer electronics, including a data storage library; (gateway functionality to access data storage library)].

10. Regarding Claim 18, Goodman discloses a method for providing services in a communication network [Fig. 1 and 2], comprising:

providing services in the communication network with each of multiple communication components, some of the components capable of providing an identical software-controlled service [Col. 2, Lines 52-65; the nodal system can be used in a variety of application, such as automobiles, household appliances, consumer electronics, including a data storage library; (gateway functionality to access data storage library)];

enabling the identical software-controlled service in a first of the communication components [Fig. 2; Col. 4, Line 20 – Col. 5, Line 43; a reset node (first component) reinitializes firmware and queries other nodes within the network to determine if the firmware level at the queried node is high than the firmware level at the reset node (first component)]; and

activating, or updating software pertaining to, the identical service in a second of the communication components by downloading software pertaining to the identical service from the first communication component to the second communication component [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node (first component) to receive the higher level firmware image from the node identified with the higher level firmware; one or more nodes may request the code signature causing the queried node (first component) to broadcast its code signature so other nodes that did not initiate the query (second component) can receive the higher

level firmware update], wherein software pertaining to the service is sent from a third communication component to the second component [Fig 1 – 3; the higher level firmware can be found on the third node (third component) within the nodal system of Fig. 1 to the reset node; nodes that do not initiate the query (second component) can receive the higher level firmware update].

11. Regarding Claim 19, Goodman discloses all the limitations of Claim 18 above. Goodman further discloses that the service is provided by the first component [Fig. 2; Col. 4, Line 20 – Col. 5, Line 43; a reset node (first component) reinitializes firmware for the service provided by the reset node].

12. Regarding Claim 23, Goodman discloses all the limitations of Claim 18 above. Goodman further discloses that the first communication component initiates updates of software in the second component and in multiple other communication components [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node (first component) to receive the higher level firmware image from the node identified with the higher level firmware; the queried node (first component) can broadcast its code signature so other nodes that did not initiate the query (second and other components) can receive the higher level firmware update from the component with the higher level firmware].

13. Regarding Claim 24, Goodman discloses all the limitations of Claim 18 above. Goodman further discloses that the first communication component in the communication network has been provided with a most up-to-date release for operation

thereon and for downloading to other components [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node (first component) to receive the higher level firmware image from the node identified with the higher level firmware; the queried node (first component) can broadcast its code signature so other nodes that did not initiate the query (second and other components) can receive the higher level firmware update from the component with the higher level firmware].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman, in view of U.S. Appl. 2002/0067505, filed by David Salgado et al. (hereinafter "Salgado").

14. Regarding Claims 15 and 29, Goodman discloses all the limitations of Claims 12 and 25 above. Goodman, however, does not specifically disclose that the comparison of release information is repeated at settable time intervals.

Salgado discloses a system and method of updating devices within a network [Para. 0018]. Salgado further discloses that the automatic upgrading of components within the network can be performed by a component at certain time intervals, such as once a week [Para. 0018].

It would have been obvious to combine the teachings of Goodman and Salgado by programming the firmware within the Goodman processor nodes with a subroutine to perform the upgrade to the software.

The motivation to do so is to ensure that each component within the network has a new updated version of the software without user interaction since the user may not be aware of the new updated driver [Para. 0007].

Claim 25 is rejected under 35 U.S.C. 102(b) as anticipated by Goodman as stated above or, in the alternative, under 35 U.S.C. 103(a) as obvious over Goodman, in view of U.S. Appl. 2003/0149620, filed by Blaine D. Gaither (hereinafter "Gaither").

15. Regarding Claim 25, Goodman discloses a method for updating a service in a packet-switching communication network [Fig. 1 and 2], comprising:

providing an identical software-controlled service on a first communication component and a second communication component [Col. 2, Lines 52-65; the nodal system can be used in a variety of application, such as automobiles, household appliances, consumer electronics, including a data storage library; (gateway functionality to access data storage library)], the components communicating peer-to-peer [Col. 2, Line 65 – Col. 3, Line 5; peer-to-peer connection between the nodes];

initiating a comparison by the first of the components to compare release information of the software controlling the service on at least the second component relative to software controlling the service on at least the first component [Fig. 2; Col. 4, Line 20 – Col. 5, Line 43; a reset node (first component) queries other nodes within the

network to determine if the firmware level at the queried node is high than the firmware level at the reset node]; and if the releases are different,

identifying a more up-to-date release installed on one of the communication components [Fig. 2; Col. 4, Line 20 – Col. 5, Line 43; a reset node queries other nodes within the network to determine if the firmware level at the queried node is high than the firmware level at the reset node]; and

initiating a software update by downloading the more up-to-date release from said one of the components to another component for which release information has been compared [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node to receive the higher level firmware image from the node identified with the higher level firmware] wherein the step of initiating a software update by downloading the more up-to-date release from said one of the components to another component for which release information has been compared is effected by downloading software from a third communication component [Fig 1 – 3; the higher level firmware can be found on the third node (third component) within the nodal system of Fig. 1 to the reset node].

Goodman discloses that each node within the network can broadcast its code signature to other nodes to initiate the firmware updating process on the nodes that did not initiate the query [Col. 5, Lines 1-7]. Goodman further discloses that each node request and send higher level firmware to one another if it is determined that a higher level firmware exists within the system [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32;

once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node to receive the higher level firmware image from the node identified with the higher level firmware]. Therefore, each node is a "servent" since they can act like a client by originating queries to another node and can act as a server by providing file information to requesting nodes.

Goodman, however, does not disclose that each component is a "servent."

Gaither discloses that it is well known in the art at the time of the present invention that every peer (i.e. each node) in a peer-to-peer network is a "servent" when the peer can act as both a client and a server [Para. 0039]. Gaither further discloses that every node acts as a client who originates queries, and a server that provides file information and acts as a router [Para. 0039]. Therefore, the nodes within the Goodman system can be described using the term "servent."

Conclusion

Examiner's Note: Prior to submitting amendments and/or remarks to the prior art rejections above, the examiner points out that the pending claims must be "given the broadest reasonable interpretation consistent with the specification" [In re Prater, 162 USPQ 541 (CCPA 1969)] and "consistent with the interpretation that those skilled in the art would reach" [In re Cortright, 49 USPQ2d 1464 (Fed. Cir. 1999)].

Additionally, the passages, figures, etc. are cited by the Examiner as courtesy to the Applicant and the cited portions of the reference, while relevant to the prosecution of the Application, may need to be viewed in scope of other portions of reference to better understand how the cited references are of relevance to the claims.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne, can be reached on (571) 272-4001. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/
Examiner, Art Unit 2453

March 13, 2009

/ARIO ETIENNE/
Supervisory Patent Examiner, Art Unit 2457